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23 *Proposed Interim Class Counsel*

24 **UNITED STATES DISTRICT COURT**  
25 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

26 IN RE SONY GAMING NETWORKS  
27 AND CUSTOMER DATA SECURITY  
28 BREACH LITIGATION

Case No. 11-md-2258 AJB (MDD)

CLASS ACTION

29 THIS DOCUMENT PERTAINS TO:  
30 ALL ACTIONS

JOINT APPLICATION TO DESIGNATE  
BRIAN R. STRANGE, JEFF S.  
WESTERMAN, ADAM J. LEVITT AND IRA  
P. ROTHKEN AS INTERIM CLASS  
COUNSEL AND TIMOTHY G. BLOOD AS  
LIAISON COUNSEL

Date: December 19, 2011  
Time: No Appearance

Assigned to the Honorable Anthony J.  
Battaglia, Courtroom 12

Pursuant to this Court's October 13, 2011 Order Following Status Conference (Dkt. No. 31) and Fed. R. Civ. P. 23(g)(1), Movants<sup>1</sup> respectfully request that this Court designate Brian R. Strange of Strange & Carpenter; Ira P. Rothken of Rothken Law Firm, Jeff S. Westerman of Milberg LLP; and Adam J. Levitt of Wolf Haldenstein Adler Freeman & Herz LLC as Interim Class Counsel and Timothy G. Blood of Blood Hurst & O'Reardon LLP as Plaintiffs' Liaison Counsel in the above-titled multidistrict litigation (the "Action") (proposed Interim Class Counsel and Liaison Counsel are collectively referred to as "Proposed Interim Class Counsel").

## **I. INTRODUCTION**

"The judge must choose the class counsel when more than one class action has been filed and consolidated or centralized. . . . If there are multiple applicants, the court's task is to

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<sup>1</sup> Movants are the named plaintiffs in the following list of cases comprising this multidistrict litigation: *Howe v. Sony Computer Entertainment America, LLC*, C.A. No. 3:11cv1001 (S.D. Cal.); *Johnson v. Sony Computer Entertainment America LLC*, C.A. No. 3:11cv1268 (S.D. Cal.); *Johns v. Sony Computer Entertainment America LLC*, C.A. No. 3:11cv2063 (N.D. Cal.); *McKewon et al v. Sony Network Entertainment America, Inc.*, C.A. No. 3:11cv2177 (N.D. Cal.); *Bova v. Sony Network Entertainment America, Inc.*, C.A. No. 3:11cv2316 (N.D. Cal.); *Turano v. Sony Corporation of America*, C.A. No. 3:11cv2206 (N.D. Cal.); *Foteh v. Sony Computer Entertainment of America, LLC*, C.A. No. 4:11cv1750 (S.D. Tex.); *Maravilla v. Sony Computer Entertainment America LLC*, C.A. No. 3:11cv3363 (N.D. Cal.); *Efird v. Sony Computer Entertainment America, LLC*, C.A. No. 3:11cv2115 (N.D. Cal.); *Newman v. Sony Computer Entertainment America LLC*, C.A. No. 3:11cv2129 (N.D. Cal.); *Newman v. Sony Computer Entertainment America, LLC*, C.A. No. 3:11cv2434 (N.D. Cal.); *Reaves v. Sony Computer Entertainment America LLC*, C.A. No. 3:11cv2254 (N.D. Cal.); *Varela v. Sony Computer Entertainment of America LLC*, C.A. No. 3:11cv2729 (D.N.J.); *Bova v. Sony Network Entertainment America, Inc.*, C.A. No. 3:11cv2316 (N.D. Cal.); *Thompson v. Sony Computer Entertainments America, Inc.*, C.A. No. 1:11cv10793 (D. Mass.); *Clawson v. Sony Computer Entertainment America LLC*, C.A. No. 3:11cv2417 (N.D. Cal.); *McCoy v. Sony Computer Entertainment America LLC*, C.A. No. 3:11cv2153 (N.D. Cal.); *Flamson v. Sony Corporation of America*, C.A. No. 3:11cv2456 (N.D. Cal.); *Cullen v. Sony Computer Entertainment America LLC*, C.A. No. 2:11cv5027 (C.D. Cal.); *Dupree v. Sony Computer Entertainment America LLC*, C.A. No. 2:11cv5026 (C.D. Cal.); *Boonparn v. Sony Computer Entertainment America LLC*, C.A. No. 2:11cv4770 (C.D. Cal.); *Whitcher v. Sony Corporation of America*, C.A. No. 2:11cv3965 (C.D. Cal.); *Johns v. Sony Computer Entertainment America LLC*, C.A. No. 3:11cv2063 (N.D. Cal.); *Peterson v. Sony Computer Entertainment America LLC*, C.A. No. 3:11cv2242 (N.D. Cal.); *Laos v. Sony Computer Entertainment America LLC*, C.A. No. 3:11cv1575 (S.D. Cal.); *Nardy v. Sony Computer Entertainment America, LLC*, C.A. No. 1:11cv962 (N.D. Ohio); *Riveron v. Sony Computer Entertainment America, LLC*, C.A. No. 3:11cv2245 (N.D. Cal.); *Matacale v. Sony Computer Entertainment America, LLC*, C.A. No. 2:11cv5028 (C.D. Cal.); *Romaine v. Sony Computer Entertainment America LLC*, C.A. No. 3:11cv2180 (N.D. Cal.); *Chapnick v. Sony Corporation of America*, C.A. No. 2:11cv4640 (C.D. Cal.); *Wilson v. Sony Computer Entertainment America LLC*, C.A. No. 2:11cv4796 (C.D. Cal.); *Kazimi v. Sony Computer Entertainment America, LLC*, C.A. No. 2:11cv3673 (C.D. Cal.); *Obregon v. Sony Computer Entertainment America LLC*, C.A. No. 3:11cv2342 (N.D. Cal.); *Walker v. Sony Computer Entertainment America, LLC*, C.A. No. 3:11cv2277 (N.D. Cal.).

1 select the applicant best able to represent the interests of the class.” *Manual for Complex*  
2 *Litigation*, Fourth Edition (“MCL4th”), §21.271. In evaluating the leadership appointment  
3 factors set forth in the applicable case law, Fed. R. Civ. P. 23(g), and the *Manual*, a court  
4 should consider the work that will be required to prosecute the particular class action lawsuits.  
5 This consideration is, in part, to avoid overstaffing a case and incurring unnecessary fees. This  
6 Action involves two discrete data breach events giving rise to Sony’s alleged liability. As a  
7 result, unlike many multidistrict litigation (“MDL”) actions, the prosecution of these class  
8 actions should be comparatively more streamlined – a fact compelling designation of a smaller  
9 group of attorneys who bring with them the areas of technical expertise needed to efficiently  
10 litigate this type of action within the multidistrict litigation context. Moreover, individual  
11 attorneys, rather than law firms, should be appointed, since it is the individual lawyers who  
12 make the difference in any case.

13 Proposed Interim Class Counsel bring the level of multidistrict litigation experience  
14 and technical expertise required to effectively and efficiently litigate these actions. This  
15 proposed leadership group is comprised of attorneys who have been recognized as “pioneers”  
16 in the field of Internet privacy and data breach class action litigation, having commenced and  
17 litigated the seminal cases in this field, including cases against RealNetworks, Amazon,  
18 DoubleClick, Google, Toys R’Us, Pharmatrak, Avenue A, Facebook, Zynga, T-Mobile,  
19 RockYou, Storm8, AdZilla, NebuAd, Palm, Michaels Stores, and Spokeo. Indeed, the  
20 expertise of these lawyers in the areas of computer forensics, computer systems, and  
21 privacy/data breach litigation is unmatched. Here, using their expertise and their knowledge of  
22 the applicable law, they have worked extensively to identify and investigate the facts and  
23 claims asserted in this case.<sup>2</sup>

24 Proposed Interim Class Counsel also have extensive experience crafting and obtaining  
25 multi-state class certifications in consumer rights actions under a variety of state consumer  
26 protection laws. Because a case like this rises or falls on the class certification determination,

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27 <sup>2</sup> In addition to being a geographically diverse group, Proposed Interim Class Counsel have offices  
28 in San Diego, where key facets of Defendants’ operations – including the computer servers in  
question – are based.

1 appointing leadership counsel experienced in this area is vitally important to protecting  
2 plaintiffs' and the other class members' claims. These attorneys have a proven track record of  
3 getting this done.

4 Moreover, Proposed Interim Class Counsel have proven experience successfully  
5 leading multidistrict litigations, including managing cases and lawyers in cases similar to this  
6 one. Lawyers who can cooperate with others and who can take into account and manage often  
7 competing interests and viewpoints are essential to a successful MDL prosecution. Already,  
8 Proposed Interim Class Counsel have worked to form and organize this MDL and have  
9 organized plaintiffs' counsel from around the country (including those vying for leadership  
10 positions) to provide for an orderly presentation at the first hearing.

11 Finally, Proposed Interim Class Counsel are fully committed to this litigation, and have  
12 more than adequate capital and personnel resources to prosecute this Action against their well-  
13 funded and deep-pocketed adversaries. In short, Movants propose an inclusive leadership  
14 structure designed to draw on the strength of all counsel involved. Their actions to date  
15 evidence this expertise and commitment to the success of this litigation. Indeed, Proposed  
16 Interim Class Counsel have already:

- 17 • Retained and consulted with the leading computer security experts in the United  
18 States;
- 19 • Conducted extensive forensic computer science analysis and investigations with  
20 thousands of potential class members;
- 21 • Filed the first class action complaints;
- 22 • Moved for transfer and pretrial coordination or consolidation under 28 U.S.C.  
23 1407 before the Judicial Panel on Multidistrict Litigation;
- 24 • Drafted and served the first e-discovery data preservation notice upon Sony;
- 25 • Interviewed potential informants and obtained information from many  
26 thousands of Sony Network consumers;
- 27 • Organized the largest and most geographically diverse coalition of plaintiffs  
28 and counsel;

- Created a state-of-the-art electronic document repository to enable the efficient sharing of encrypted litigation documents among all plaintiffs' counsel;
- Arranged with Defendants' counsel for a single, coordinated response date to the various complaints; and
- Proposed methods for telephonic appearances at the status conference as requested by this Court and prepared the proposed agenda.

For these reasons, which are more fully detailed below, Movants respectfully request that the Court designate Messrs. Strange, Westerman, Levitt, and Rothken as Interim Class Counsel and Mr. Blood as Liaison Counsel in this multidistrict litigation.

## **II. LEGAL STANDARD**

Federal Rule of Civil Procedure 23(g)(3) authorizes the court to "designate interim class counsel to act on behalf of a putative class before determining whether to certify the action as a class action." While Rule 23(g) does not set forth the standards to be applied in choosing interim class counsel, courts have held that the factors used to appoint class counsel pursuant to Rule 23(g)(1) should be applied. *Parkinson v. Hyundai Motor Am.*, No. SACV 06-345 AHS (MLGx) *et al.*, 2006 U.S. Dist LEXIS 59055, at \*6 (C.D. Cal. Aug. 7, 2000) (citing MCL 4th § 21.11); *In re Air Cargo Shipping Serv. Antitrust Litig.*, 240 F.R.D. 56, 57 (E.D.N.Y. 2006). These factors are:

1 the work counsel has done in identifying or investigating potential claims in the action;  
2 counsel's experience in handling class actions, other complex litigation, and claims of the  
3 type asserted in the action;  
4 counsel's knowledge of the applicable law; and  
5 the resources counsel will commit to representing the class.

6 Fed. R. Civ. P. 23(g)(1)(A). The Court may also "consider any other matter pertinent to  
7 counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P.  
8 23(g)(1)(B).

9 "In evaluating prospective class counsel, the court should weigh all pertinent factors.  
10 No single factor should necessarily be determinative in a given case." Advisory Committee  
11 Notes to the 2003 Amendments to Fed. R. Civ. P. 23(g). A court may also consider "the  
12 attorneys' ability to command the respect of their colleagues and work cooperatively with  
13 opposing counsel and the court." MCL4th, §10.224, p. 27. As discussed herein, Proposed  
14 Interim Class Counsel satisfy all of the Rule 23(g) factors and are the counsel best able to  
15 represent the interests of the various classes proposed in this Action. The success of these  
16 attorneys and firms in leading these types of cases is attributable to their experience and  
17 qualifications, their ability to manage litigation such as this, and their willingness to devote the  
18 necessary resources to prosecute these types of actions to their successful conclusion.<sup>3</sup>

### 19 **III. ARGUMENT**

20 Proposed Interim Class Counsel's significant efforts in the early stages of this  
21 litigation, their experience in consumer rights class action litigation, including multidistrict  
22 litigation and electronic privacy matters, and their ability and willingness to commit the  
23

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24 <sup>3</sup> Significantly, the attorneys and law firms comprising Proposed Interim Class Counsel do not have  
25 standing alliances with one another. In fact, these attorneys and firms independently filed their  
26 respective cases, advocated divergent MDL transferee venues for these cases, and opposed each  
27 others' respective positions up to and including at the July 2011 JPML hearing at which the 28  
28 U.S.C. § 1407 motion pertaining to this litigation was heard and adjudicated. In the ensuing weeks,  
however, much analysis and discussion occurred among these attorneys and, after careful  
consideration, they decided to collaborate with one another because of their collective belief that  
doing so would result in the best representation of plaintiffs' and other class members' interests in  
this litigation.

resources required to effectively prosecute this case make them the clear choice for leadership selection here, based on the four enumerated Rule 23(g)(1)(A) factors.

**A. Proposed Interim Class Counsel’s Extensive Investigation of the Sony Data Breach and Their Substantial Work Developing the Legal Claims Involved In the Action (Fed. R. Civ. P. 23(g)(1)(A)(i))**

In considering a motion for appointment of lead counsel or interim class counsel, a court must consider the work undertaken by that counsel in the case. *E.g., Harrington v. City of Albuquerque*, 222 F.R.D. 505, 520 (D.N.M. 2004) (appointing class counsel who had “done significant work in [the] case”). In this litigation, Proposed Interim Class Counsel satisfies that requirement far more than any competing applicant or applicant group. Indeed, collectively, Proposed Interim Class Counsel have been at the forefront of this litigation from the outset and are the primary force behind the achievements made in this case to date.

After significant research and investigation into the data breach at issue, members of the Proposed Interim Class Counsel group were the first to file a class action lawsuit. The work done to investigate and develop these claims went far beyond merely learning about the data breach through media reports, confirming the reported events and filing a case. All the cases that followed alleged the same or similar claims.

As detailed in the time line attached as Exhibit A to the Declaration of Ira Rothken (“Rothken Decl.”), the investigation began in early March 2011, about six weeks before Sony publicly disclosed the first data breach. A number of events were occurring that predictably lead to attempts to hack a computer network like Sony’s Playstation Network. While Proposed Interim Class Counsel did not know at that time that the breach would be as massive as it turned out to be, or that Sony’s network security and data protection protocols and practices were as stunningly poor as they were ultimately revealed to be, to those with the necessary background, the events were worth monitoring. These events included developments in Sony’s lawsuit against George Hotz for allegedly “jail breaking” his Playstation 3 and posting instructions for others to do the same so any user could use his or her gaming console as a Linux computer. The “hacktivist” group known as “Anonymous” took a great deal of interest in what the group viewed as an unfair attack on Mr. Hotz. Shortly thereafter, Sony

1 laid off about one-third of its online entertainment division. By mid-March 2011, members of  
2 the Proposed Interim Class Counsel group began investigating alleged hacking incidents,  
3 including unusual and widespread error messages received by users logging into the Sony  
4 Playstation Network.

5 By mid-April, 2011, members of the Proposed Interim Class Counsel group were  
6 closely monitoring Sony's activities. By April 20, 2011, when Sony shut down its Playstation  
7 Network - preventing some 77 million registered users of its network from playing online  
8 games, accessing their accounts, or purchasing movies and other entertainment on the  
9 Playstation Network – Proposed Interim Class Counsel were investigating the reasons for the  
10 network shutdown, ultimately learning of the events giving rise to this litigation.

11 On or about April 26, 2011, members of the Proposed Interim Class Counsel group  
12 developed their theory that Sony's inability to confirm whether credit card data had been stolen  
13 from its Playstation Network as a result of Sony's alarmingly deficient protocols for handling  
14 and otherwise safeguarding such information. The Payment Card Industry Data Security  
15 Standard ("PCI DSS") mandates standards to ensure that all companies that process, store or  
16 transmit credit card information maintain an adequately secure environment. PCI compliance  
17 requires proper logging/auditing of access to regulated data and the implementation of proper  
18 firewalls to audit the integrity and security of the data that passes through the network. Based  
19 on Proposed Interim Class Counsel's investigation, it appeared that Sony violated industry  
20 protocols, thereby putting its network and its network users' information at serious risk for  
21 breach and loss. Proposed Interim Class Counsel's continuing investigation confirmed these  
22 facts.

23 On April 27, 2011, class representative Kristopher Johns filed the first class action  
24 lawsuit against the Sony entities in the United States District Court for the Northern District of  
25 California. The lawsuit alleged, among other things, that Sony was not PCI compliant and was  
26 negligent in its data security, thus breaching its agreements with its users and violating  
27 applicable data security laws. Since filing the initial complaint, members of the Proposed  
28 Interim Class Counsel group have continued investigating these claims, including additional



1 details of the data breach and class members' damages. In conjunction with this ongoing  
2 investigation, which implicates several cutting-edge forensic computing techniques, Proposed  
3 Interim Class Counsel have communicated with and obtained data from thousands of affected  
4 Sony consumers.

5 Proposed Interim Class Counsel are working with top experts in the electronic privacy  
6 and data breach fields, maintaining an investigative log and database, communicating with  
7 potential informants and continuing to develop theories and discovering facts relating to the  
8 data breaches and the reasons Sony was unable to prevent those breaches or adequately guard  
9 its customers' confidential information, investigating the various ways in which class members  
10 have been damaged by Sony's conduct, including learning of the underground attempted sale  
11 of class members' information.

12 As part of their ongoing efforts to develop the claims in this litigation, Proposed  
13 Interim Class Counsel have also developed a comprehensive and secure online document  
14 repository capturing the results of their investigation. This state-of-the art Internet repository  
15 will facilitate the sharing of documents among plaintiffs' counsel. The document repository  
16 resides on servers in a highly secure facility. All of the data is encrypted on the server and  
17 while in transit.

18 **B. Proposed Interim Class Counsel's Experience in Handling Class Actions**  
19 **and Other Complex Litigation, As Well As Their Knowledge of and**  
20 **Experience Litigating the Applicable Data Breach Laws, Supports**  
**Approval of Their Requested Leadership Structure (Fed. R. Civ. P.**  
**23(g)(1)(A)(ii) and (iii)**

21 Courts applying Rule 23(g) have placed great emphasis on proposed lead class  
22 counsel's experience with and knowledge of the applicable law – considering it to be the  
23 “most persuasive” factor in the Rule 23(g) analysis. *See, e.g., In re Terazosin Hydrochloride*  
24 *Antitrust Litig.*, 220 F.R.D. 672, 702 (S.D. Fla. 2004) (“The consideration that the Court finds  
25 to be the most persuasive, however, relates to [proposed class counsel's] experience in, and  
26 knowledge of, the applicable law in this field.”). Proposed Interim Class Counsel include  
27 recognized and proven leaders of the complex litigation bar, have substantial experience  
28 litigating claims similar to those here, possess knowledge of the applicable law, and have

1 expertise in handling class actions and other complex litigation, including Internet privacy and  
2 data breach cases.

3 Here, for example, Proposed Interim Class Counsel have served in leadership positions  
4 in similar Internet-related litigation, including *In re DoubleClick, Inc. Privacy Litig.*, No. 00-  
5 CIV0641 (NRB) (S.D.N.Y.) (alleging improper use of invisible web bugs and cross website  
6 cookies); *In re T-Mobile Sidekick Litig.*, No. C 09-04854 JW (N.D. CA) (loss of consumer  
7 data and security breach of Microsoft Servers); and *Parke, et al. v. CardSystems Solutions,*  
8 *Inc., et al.* (San Francisco Superior Court Case No. CGC-05-442624) (among the largest  
9 breaches of consumer credit card data in the United States); *In re Michaels Stores, Inc., Pin*  
10 *Pad Litig.*, No. 1:11-cv-03350 (MDL No. 2312) (N.D. Ill.) (nationwide data breach case).

11 As demonstrated below, each applicant has the expertise and skill set that qualify him  
12 to lead this litigation.<sup>4</sup> Combined, the group of lawyers comprising Proposed Interim Class  
13 Counsel here is best-suited to lead this Action.<sup>5</sup>

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14  
15 <sup>4</sup> The trend in appointing interim class counsel (and class counsel) in multidistrict litigation has been  
16 toward appointing individual lawyers, rather than their law firms. By so doing, the Court is assured  
17 that the appointed attorneys are personally engaged in prosecuting the case to its successful  
18 conclusion, instead of turning the case over to unknown attorneys, for the benefit of the appointed  
19 attorneys' firms. District Court Judge Carl Barbier recently made this point in his leadership  
20 appointment order in *In Re: Apple iPhone 3G and 3GS "MMS" Marketing and Sales Practices*  
21 *Litigation*, MDL No. 2116 (E.D. La. March, 4 2010) stating:

19 The aforementioned counsel are to be aware that appointment to the PSC is of a  
20 personal nature. Accordingly, the above appointees cannot be substituted by other  
21 attorneys, including members of the appointee's law firm, to perform the PSC's  
22 exclusive functions, such as committee meetings and court appearances, except with  
23 prior approval of the Court.

21 *Id.* at \*2. A copy of this Order is attached as Exhibit B.

22 <sup>5</sup> In addition to being supported by the largest group of plaintiffs and their counsel, further testament  
23 to the strength and ability of Proposed Interim Class Counsel's application is the fact that several of  
24 the attorneys and law firms supporting the present motion have substantial and successful  
25 consumer class action and Internet privacy/data breach experience in their own right. Those  
26 attorneys include Allan Kanner, of Kanner & Whiteley, L.L.C. (New Orleans, Louisiana); Gary  
27 Klein, of Roddy Klein & Ryan (Boston, Massachusetts); Brooks Cutter, of Kershaw Cutter &  
28 Ratnoff LLP (Sacramento, California); William Audet, of Audet & Partners, LLP (San Francisco,  
California); Michael Ram of Ram, Olson Cereghino & Kopczynski LLP (San Francisco,  
California); and Laurence King, of Kaplan Fox (San Francisco, California). Messrs. Kanner,  
Klein, Kershaw, Audet, Ram, and King, whose Firm Resumes are appended to the Rothken Decl.  
as Exhibits H - M, will work with Proposed Interim Class Counsel as an *ad hoc* Executive  
Committee, thus lending their considerable experience and expertise, on an as-needed basis, to the  
prosecution of this Action.

1                   **1.       Proposed Interim Class Counsel**

2                   a.       **Adam J. Levitt, Wolf Haldenstein Adler Freeman & Herz**  
3                               **LLC**

4               Adam Levitt, a partner in the Chicago office of Wolf Haldenstein Adler Freeman &  
5 Herz LLC, has extensive experience leading multidistrict and other nationwide class action  
6 lawsuits, with a substantial focus on Internet and technology law. Recognized as a “pioneer”  
7 in the data protection and Internet privacy field by Judge Ware, Chief Judge of the United  
8 States District Court for the Northern District of California,<sup>6</sup> Mr. Levitt presently serves as co-  
9 lead counsel in *In re Zynga Privacy Litigation*, No. CV 10-04680 (N.D. Cal.) (Ware, C.J.) and  
10 *In re Michaels Stores, Inc., Pin Pad Litigation*, No. 1:11-cv-03350 (MDL No. 2312) (N.D.  
11 Ill.).

12              Mr. Levitt has also served as co-lead counsel in the following seminal Internet privacy  
13 and data collection actions: *In re RealNetworks, Inc. Privacy Litig.*, MDL No. 1366 (N.D. Ill.);  
14 *Supnick v. Amazon.com, Inc.*, No. C00-0221P (W.D. Wash.); *In re DoubleClick, Inc. Privacy*  
15 *Litig.*, No. 00-CIV0641 (NRB) (S.D.N.Y.); *Chance v. Avenue A, Inc.*, No. C00-1964C (W.D.  
16 Wash.); and *In re Pharmatrak, Inc. Privacy Litig.*, No. 00-11672-JT (D. Mass.). Several of  
17 these cases are the key cases in the data protection and Internet privacy field and have been  
18 instrumental in creating the jurisprudential framework for this type of class and direct  
19 litigation. *Supnick* was the first case in which a nationwide class was certified under the  
20 Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2522 (“ECPA”), based on the  
21 court’s holding that “interpretation of the relevant privacy policies presents a common  
22 question of law or fact that can be resolved by this Court.” *Spunik v. Amazon.com, Inc.*, No.  
23 C00-0221P, 2000 U.S. Dist. LEXIS 7073, 3-5 (W.D. Wash. May 18, 2000). In *Pharmatrak*,  
24 the First Circuit reversed summary judgment on the grounds that the “consent” and “intended  
25 recipient” exceptions to the ECPA can be limited by contractual representation (the first, and

26              <sup>6</sup> *In re Zynga Privacy Litig.*, No. CV 10-04680 (N.D. Cal.), December 10, 2010 Order Denying  
27 Defendant Facebook’s Motion to Consolidate; Granting Zynga’s Motion to Consolidate;  
28 Appointing Interim Class Counsel (Dkt. No. 69), at 5:3-5 (“Wolf, Haldenstein, Adler, Freeman and  
Herz, LLC. . . [was a] pioneer[] in the electronic privacy class action field, having litigated some of  
the largest consumer class actions in the country on this issue.”)

1 still the only, appellate court to rule on this important issue). *In re Pharmatrak, Inc. Privacy*  
2 *Litig.*, 329 F.3d 9, 19-21 (1st Cir. 2003).

3 Mr. Levitt has also had substantial success leading cases outside of the data protection  
4 and Internet privacy fields. For example, he presently serves as Co-Lead Counsel in *In re*  
5 *Genetically Modified Rice Litig.*, MDL No. 1811 (E.D. Mo.), in which he represents the  
6 interests of United States long-grain rice producers seeking to recover damages they sustained  
7 resulting from the contamination of the U.S. rice supply with unapproved, genetically-  
8 modified rice seed traits. That case settled on July 1, 2011 for \$750,000,000. In addition to  
9 *Genetically Modified Rice Litig.*, Mr. Levitt served as Co-Lead Counsel in *In re StarLink Corn*  
10 *Products Liability Litig.*, MDL No. 1403 (N.D. Ill.), where he recovered \$110,000,000 on  
11 behalf of U.S. corn farmers who sustained market losses resulting from the contamination of  
12 the U.S. corn supply with genetically-modified StarLink corn. In addition, Mr. Levitt is  
13 presently serving as Co-Lead Counsel in, among other cases, *In re Reebok Easytone Litig.*, No.  
14 4:10-cv-11977-FDS (D. Mass.), a false advertising consumer class action in which Mr. Levitt  
15 and co-counsel achieved a \$25 million cash refund settlement for class members that is in the  
16 process of final court approval; and *In re Porsche Cars North America, Inc., Plastic Coolant*  
17 *Tubes Prods. Liab. Litig.*, MDL No. 2233 (S.D. Ohio), a consumer class action concerning  
18 defective parts in certain models of Porsche Cayenne sport utility vehicles.

19 Mr. Levitt is an elected member of the American Law Institute, has achieved an “AV”  
20 rating by Martindale-Hubbell, was named one of Avenue Magazine’s “Legal Elite” (2010),  
21 and his most recent article was recently published in the Yale Law Journal Online. *See*  
22 Michael D. Y. Sukenik & Adam J. Levitt, *CAFA and Federalized Ambiguity: The Case for*  
23 *Discretion in the Unpredictable Class Action*, 120 Yale L.J. Online 233 (2011),  
24 [http://www.yalelawjournal.org](http://www.yalelawjournal.org/the-yale-law-journal-pocket-part/legislation/cafa-and-federalized-ambiguity:-the-case-for-discretion-in-the-unpredictable-class-action/)  
25 [/the-yale-law-journal-pocket-part/legislation/cafa-and-](http://www.yalelawjournal.org/the-yale-law-journal-pocket-part/legislation/cafa-and-federalized-ambiguity:-the-case-for-discretion-in-the-unpredictable-class-action/)  
26 [federalized-ambiguity:-the-case-for-discretion-in-the-unpredictable-class-action/](http://www.yalelawjournal.org/the-yale-law-journal-pocket-part/legislation/cafa-and-federalized-ambiguity:-the-case-for-discretion-in-the-unpredictable-class-action/). Mr. Levitt  
27 also speaks nationally on a variety of topics relating to class actions and other litigation-related  
28 issues, including data security and privacy – being the sole plaintiffs’ lawyer invited to address

1 the International Association of Privacy Professionals about “Privacy Litigation: The  
2 Evolution in Theories and Outcomes” (Boston, Massachusetts, September 2009).

3 Wolf Haldenstein, Mr. Levitt’s firm, is a nationally recognized class action law firm  
4 with extensive experience and expertise in consumer protection, securities, antitrust, financial,  
5 and other complex class action litigation. Founded in 1888, Wolf Haldenstein has offices in  
6 San Diego, Chicago, and New York City. The firm’s Class Action and Complex Litigation  
7 Group is comprised of 35 attorneys and ten paraprofessional assistants and the firm has  
8 repeatedly been recognized for its successful class action leadership. *See* Rothken Decl.  
9 Exhibit C for Wolf Haldenstein’s firm resume.

10 b. **Ira P. Rothken, Rothken Law Firm**

11 Ira P. Rothken, a former medical researcher and computer scientist, began the Northern  
12 California based Rothken Law Firm in 1993 and the firm has evolved from the beginning of  
13 the modern internet in 1995 to emphasize complex consumer protection matters, class actions,  
14 and high technology related litigation.

15 Mr. Rothken has been involved in a number of groundbreaking mass action high  
16 technology cases requiring the blend of both technical and legal skills such as those needed in  
17 the instant case involving the Sony security breach. Here are some examples:

- 18 • Co-lead class counsel representing owners of T-Mobile Sidekick Smartphones against  
19 T-Mobile, Microsoft and its subsidiary, Danger, in a nationwide federal court class  
20 action lawsuit consolidated in the Northern District of California entitled *In re T-  
Mobile Sidekick Litig.* claiming the devices and network servers and service were  
defective, causing loss of data and service, resulting in a nationwide class settlement;
- 21 • Co-lead class counsel representing owners of Palm Treo 600 and 650 Smartphones in a  
22 nationwide federal court class action lawsuit consolidated in the Northern District of  
23 California entitled *In re Palm Treo* claiming the devices are inherently defective  
resulting in a nationwide class settlement;
- 24 • Co-lead settlement class counsel in a nationwide consumer privacy lawsuit brought  
25 against DoubleClick for allegedly intruding on web user privacy via cookies and  
invisible web bugs in *In re DoubleClick* consolidated in the Southern District of New  
26 York entitled *In re DoubleClick Privacy Litig.* resulting in a nationwide class  
settlement;
- 27 • Lead counsel in a State consumer lawsuit against a Music CD Recording Company to  
28 prevent their Digital Rights Management scheme from violating consumer privacy and  
first sale doctrine rights in *DeLise v. Sunncomm et al* resulting in a settlement that  
benefitted consumers nationwide;

- Lead counsel in a State consumer lawsuit on brought on behalf of consumers against Microsoft, Symantec, Adobe, and others related to their software “EULA”, clickthrough, and shrinkwrap policies in *Baker v. Microsoft et al* resulting in a settlement that led to policy changes, created a more transparent market for software companies to compete on licensing terms, and benefitted consumers nationwide;
- Co-lead counsel in *Parke, et al. v. CardSystems Solutions, Inc.*, et al. (San Francisco Superior Court Case No. CGC-05-442624) , a case arising from a historically large credit card data security breach and issues of PCI compliance, and which resulted in CardSystems filing for Bankruptcy protection and losing its Visa and Mastercard processing accreditation.

Mr. Rothken’s Internet litigation “*efforts have won him praise from the Electronic Frontier Foundation (EFF), the advocacy group that has become synonymous with user rights on the Web.*” CNET July 31, 2007 News.com.

Mr. Rothken’s legal and technical skills at e-discovery will be helpful in this data breach case. Mr. Rothken is an active member of the cutting edge **Sedona Conference® Working Group 1 on E-Discovery** and co-edited a leading Commentary on the issues of preserving, managing, and identifying not reasonably accessible electronically stored information. Mr. Rothken as part of his activities on the Sedona Conference spoke at Conferences and Seminars on e-discovery issues, has made numerous contributions to the Sedona Conference works used by Courts and counsel throughout the United States, and in many instances through the Sedona Conference works with Judges and technology lawyers to evolve how e-discovery issues are handled in Courts nationwide including for example through the Sedona Cooperation Proclamation.

Mr. Rothken has given legal seminars in conjunction with the Practicing Law Institute, the Sedona Conference, and the Recorder legal newspaper on numerous Internet law related topics including Internet privacy and data protection, e-discovery, and Internet copyright issues. Mr. Rothken is also a member of the Interactive Game Developers Association (“IGDA”) and has spoken at the Computer Game Developers Conference on multiple occasions about how to start a videogame development company. In recognition of his expertise in this field, Mr. Rothken also has appeared as a guest legal expert on television, in seminars, and radio, including CNN (internet privacy), NBC (internet copyright), CBS (internet privacy), CNET radio (internet copyright and privacy), and Court TV (multiple

1 appearances for internet gambling issues and copyright issues), and has been quoted in  
2 numerous publications including legal newsletters, newspapers (Wall Street Journal, Newsday,  
3 NY Times), magazines, and law review articles. See Rothken Decl. Exhibit D for Mr.  
4 Rothken's firm resume.

5 c. **Brian R. Strange, Strange & Carpenter**

6 Brian R. Strange is an experienced and respected class action and complex business  
7 trial lawyer. Mr. Strange has lectured on class actions before numerous organizations,  
8 including the California State Bar, the Practicing Law Institute, and various consumer  
9 attorneys organizations, and is frequently quoted in various media outlets as an authority on  
10 class action litigation.

11 Mr. Strange has served as lead counsel in several class action cases with settlements  
12 obtained in excess of \$500 million, including settlements with the nation's largest corporations  
13 and has organized and coordinated numerous slates of plaintiffs' counsel in various MDLs  
14 across the country. He has been at the forefront of many multidistrict and class action cases,  
15 including arguing *Discover Bank v. Superior Court*, 36 Cal. 4th 148, 30 Cal. Rptr. 3d 76  
16 (2005) before the California Supreme Court. In what was one of the most widely cited cases  
17 by courts nationwide on this issue, the Court in *Discover Bank* held that bans on class actions  
18 in arbitration clauses were unenforceable. Mr. Strange has also been appointed lead counsel in  
19 numerous national class actions, including: (a) a nationwide settlement against AT&T  
20 Mobility LLC regarding flat-rate early termination fees for mobile phones, entitled *Hall, et al.*  
21 *v. AT&T Mobility LLC f/k/a Cingular Wireless LLC, et al.*, Case No. 07-05325 (JLL) (D. N.J.),  
22 which resolved cellular telephone cases involving early termination fees across the country; (b)  
23 *Simonet, et al. v. GlaxoSmithKline, et al.*, Case No. 06-1230 (GAG/CVR) (D. P.R.), a recently  
24 settled case entitled involving the anti-depressant drug Paxil; (c) *In Re: Apple iPhone 3G and*  
25 *3GS MMS Marketing and Sales Practices Litigation*, MDL No. 2116 (E.D. La.) (Executive  
26 Committee member in lawsuit concerning the operation of the Apple iPhone on AT&T 3G and  
27 3GS networks); and (d) *Toyota Motor Cases*, J.C.C.P. 4621 (L.A. Sup. Ct.) (Mohr, J.)  
28

1 (appointed Co-Lead Class Counsel in the California state coordinated proceeding involving  
2 allegations of unintended acceleration in Toyota vehicles).

3 Of particular significance in the context of this litigation, Mr. Strange recently authored  
4 an article entitled “Security Breach Injury in Cyberspace: Does the Law Keep Up with New  
5 Damage Frontiers?” which is scheduled for publication in *Los Angeles Lawyer* in Winter 2012,  
6 and has been involved in several recent cases involving Internet-related issues, including  
7 domain names, data security, and personal privacy. He is an “AV” rated lawyer by Martindale  
8 Hubbell and was nominated as a Southern California Super Lawyer for 2010, 2011 and for the  
9 upcoming year 2012. See Rothken Decl. Exhibit E for Mr. Strange’s firm resume.

10 d. **Jeff S. Westerman, Milberg LLP**

11 Jeff S. Westerman, a partner in Milberg’s Los Angeles office, serves on the Central  
12 District of California, U.S. Magistrate Judge Merit Selection Panel (2003-present). He is a  
13 member and currently Vice Chair of the Central District’s standing committee on Attorney  
14 Discipline (2004-present) and a Central District of California Attorney Settlement Officer  
15 Panelist (1998-present). He is active in complex litigation in California and moderates and  
16 speaks on panels of lawyers and judges on the topic as a past Chair and panelist of the LA  
17 County Bar Complex Court Symposium Program. Mr. Westerman was a member (2001-  
18 2003) and Co-Chair (2002-2003) of the Central District of California Attorney Delegation to  
19 the United States Ninth Circuit Judicial Conference.

20 Mr. Westerman was one of the principal attorneys responsible for two major California  
21 Supreme Court consumer class action rights cases (both 7-0 in favor of consumers) involving  
22 class action procedure: *Pioneer Electronics (USA) v. Superior Court* (Olmstead), 40 Cal. 4th  
23 360 (Cal. 2007) and *Branick v. Downey Savings & Loan Ass’n*, 39 Cal. 4th 235 (Cal. 2006).

24 Mr. Westerman was the president of the Association of Business Trial Lawyers  
25 (2004-2005) and a member of the Board of Governors for eight years. He is also on the Board  
26 of Governors of the Consumer Attorneys Association of Los Angeles. Mr. Westerman is the  
27 Secretary of the Los Angeles County Bar Litigation Section Executive Committee, a member  
28 of the Los Angeles Superior Court Bench-Bar Civil Courts Committee, and a member of the



1 Board of the Los Angeles Chapter of the Federal Bar Association. He is also past Chair of the  
2 LA County Bar Complex Courts Bench-Bar Committee, and he served as Judge Pro Tem in  
3 the Los Angeles Small Claims Court for many years. He was on the California State Bar Task  
4 Force on Complex Litigation, and Chair of the Judicial Education Subcommittee (1997). He is  
5 one of Lawdragon's 3000 Leading Plaintiffs' Lawyers In America (2007- 2010).

6 Mr. Westerman's firm, Milberg, played a pioneering role in privacy-related litigation.  
7 Milberg was Co-Lead Settlement Counsel in an early privacy class action against DoubleClick  
8 in 2000, which alleged that the company had placed web cookies on computer hard drives of  
9 Internet users who accessed DoubleClick-affiliated web sites, in violation of three federal  
10 laws: the Stored Communications Act ("SCA"), the Wiretap Statute, and the Computer Fraud  
11 and Abuse Act. *In re DoubleClick Inc. Privacy Litig.*, Master File No. 00-CIV-0641 (NRB)  
12 (S.D.N.Y.). As a part of the settlement agreement negotiated by Milberg and other plaintiffs'  
13 counsel, DoubleClick agreed to explain its privacy policy in "easy-to-read" language; conduct  
14 a public information campaign consisting of 300 million banner ads inviting consumers to  
15 learn more about protecting their privacy; and institute data purging and opt-in procedures  
16 among other requirements. Milberg was instrumental in settling that privacy class action and  
17 coordinated with 31 plaintiffs' law firms that represented plaintiffs. More recently, Milberg  
18 was designated as a member of the plaintiffs Executive Committee in *In re iPhone Application*  
19 *Litig.*, 11-MD-02250 (LHK) (N. D. Cal.).

20 Milberg has more than 40 years of experience litigating hundreds of complex class  
21 actions in a wide variety of fields, including consumer and privacy-related class actions. In  
22 2009 and 2010 the *National Law Journal* acknowledged Milberg's "exemplary, cutting-edge  
23 work" by including the firm in its prestigious 2010 Plaintiffs' Hot List. Milberg is consistently  
24 ranked at the top of the field of class action litigation in the securities field by RiskMetrics  
25 Group's Securities Class Action Services ("SCAS"). On March 21, 2011, SCAS ranked  
26 Milberg as one of the top firms with settlements totaling approximately \$137.5 million  
27 achieved in 2010, and also recognized Milberg as one of the top-five firms in the nation for  
28 number of settlements achieved (nine), in its "Top SCAS 50 for 2010" list. Milberg was

1 previously recognized by SCAS for top lead counsel participation with 28 total settlements in  
2 the top 100 securities class action settlements of all time. The previous SCAS report for 2009  
3 ranked Milberg as one of the top-50 plaintiffs' firms with settlements totaling \$1.44 billion and  
4 averaging \$144 million per settlement, and also recognized Milberg as one of the top-five  
5 firms in the nation for number of settlements achieved (ten). In 2010, Law360 selected  
6 Milberg as one of its "plaintiff-side securities firms of the year," citing the firm's \$586 million  
7 recovery in the *Initial Public Offering* litigation, among other significant accomplishments.

8 As reported by Law360 in September 2010, Milberg was one of the few plaintiffs' law  
9 firms recognized as an "awesome opponent" in a survey of corporate counsel conducted for  
10 BTI Consulting Group's 2011 Litigation Outlook report. The survey, which questioned 240  
11 corporate counsel about which firms they feel are the most formidable litigation opponents,  
12 revealed that corporate counsel view Milberg as "[one of the law firms] they prefer to steer  
13 clear of in litigation." See Rothken Decl. Exhibit F for Milberg's firm resume.

14 **2. Proposed Liaison Counsel -- Timothy G. Blood, Blood Hurst**  
15 **& O'Reardon, LLP**

16 As detailed in his firm's resume (see Rothken Decl. Exhibit G), Timothy Blood has  
17 extensive experience litigating a wide variety of class actions that invoke a variety of state  
18 laws, finding solutions to difficult class certification issues and managing large, multiparty  
19 litigations, including multidistrict litigations. Mr. Blood has been appointed class counsel in  
20 cases invoking many of the state laws alleged in this multidistrict litigation, including the laws  
21 of California, Ohio, Florida, New York, New Jersey and Massachusetts. Further, Mr. Blood  
22 has obtained nationwide and multistate class certifications in consumer rights and other class  
23 actions and has tried class actions. He successfully obtained certification in very difficult  
24 cases, including one of only two contested certifications in the "vanishing premium" series of  
25 insurance cases; cases where many others who attempted contested certifications failed.

26 State and federal courts around the country have appointed Mr. Blood to leadership  
27 positions, including in multidistrict litigations. Over the last few years, Mr. Blood has worked  
28 with the Federal Trade Commission ("FTC") in consumer rights cases, including in the

1 *Dannon* litigation, which resulted in the largest food industry false advertising action in  
2 history. Recently, Mr. Blood settled the *In re Reebok Easytone Litig.*, where the settlement  
3 with the class and the FTC is being administered through the class action. This level of  
4 coordination in a class action with the FTC is unprecedented.

5 Mr. Blood also has been involved in a number of precedent-setting appellate decisions  
6 in state and federal courts, including state Supreme Court decisions that will be instrumental in  
7 this litigation.

8 As an indication of Mr. Blood's ability to cooperatively work with others, Mr. Blood is  
9 also active in a variety of bar functions, including presently serving as a member of the Board  
10 of Directors of Consumer Attorneys of California and as an officer of Consumer Attorneys of  
11 San Diego. On behalf of his clients, in addition to his work with the FTC, he has worked with  
12 the California Department of Justice, the California Legislative Analyst's Office and the  
13 California Department of Insurance. He has lobbied to limit the provisions of the Class Action  
14 Fairness Act and worked with both houses of the California legislature on a variety of  
15 legislation. He is also a frequent lecturer at continuing legal education seminars and chairs the  
16 annual Consumer Attorneys of San Diego Class Action seminar. He is also a column editor  
17 for *Trial Bar News*.

18 **C. Proposed Interim Class Counsel's Significant Commitment of Resources**  
19 **on Behalf of the Class and Their Commitment to Provide Such Resources**  
20 **Supports Their Appointment as Co-Lead Counsel (Fed. R. Civ. P.**  
21 **23(g)(1)(A)(iv))**

22 Proposed Interim Class Counsel's track record of effectively prosecuting complex class  
23 actions reflects their willingness to commit the resources and time necessary to effectively  
24 prosecute this case. On many occasions, Proposed Interim Class Counsel have prosecuted  
25 cases lasting many years and requiring significant resources. Proposed Interim Class Counsel  
26 fully expect that similarly extensive resources will be required here, and they are prepared to  
27 invest those resources on behalf of plaintiffs and the other members of the proposed classes.

28 Proposed Interim Class Counsel have the capital and personnel resources necessary to  
represent plaintiffs and the proposed class and have already demonstrated a willingness to

1 expend these resources to properly and efficiently prosecute these actions. Indeed, based on  
2 their experience in filing and successfully litigating data breach and other class actions,  
3 Proposed Interim Class Counsel fully understand the substantial investment of time and  
4 resources necessary to properly pursue and lead such litigation and are committed to devoting  
5 the necessary resources to this case.

6 In addition to the specific Rule 23(g) appointment criteria, which, as explained above,  
7 Proposed Interim Class Counsel readily satisfy, there are several other material factors that  
8 further strengthen Proposed Interim Class Counsel's appointment request here.

9 **1. Ensuring Evidence in this Case is Preserved**

10 Proposed Interim Class Counsel where the first to take steps to ensure that Sony  
11 preserved all relevant information when they sent a preservation letter to Sony.

12 **2. Commencing This Multidistrict Litigation**

13 Proposed Interim Class Counsel commenced and led the efforts that ultimately resulted  
14 in these cases being transferred to this District by the JPML for coordinated or consolidated  
15 pretrial proceedings. On May 9, 2011, the Rothken Law Firm filed with the JPML the initial  
16 motion to transfer these actions pursuant to 28 U.S.C. § 1407. Mr. Strange and his firm were  
17 the first to respond and the first to request that the actions be transferred to the Southern  
18 District of California. Messrs. Rothken, Strange, Westerman, Levitt, and Blood initiated  
19 plaintiff-wide communications regarding the proper transferee district for these cases and  
20 played an instrumental role in all aspects of the proceedings before the JPML.

21 **3. Initiating Plaintiffs' Private Ordering/Organizational Efforts**

22 On August 11, 2011, Messrs. Strange and Blood initiated the first, post MDL transfer,  
23 organizational efforts amongst all plaintiffs' counsel to discuss the organization and  
24 coordination of these cases. Proposed Interim Class Counsel followed up on those initial  
25 efforts with extensive email, oral communications, and in-person meetings that were key to the  
26 coordination of plaintiffs' collective presentation at the October 13, 2011 Status Conference.  
27  
28

1 Proposed Interim Class Counsel prepared and filed the most widely-supported Proposed Status  
2 Conference Agenda, which was supported by 55 plaintiffs' firms.<sup>7</sup>

#### 3 **4. Creating Plaintiffs' Counsel Master Email List**

4 Months ago, Mr. Strange's firm and Mr. Rothken's firm created a master email list of  
5 all counsel, which they continue to update. Currently, the list consists of more than 120 email  
6 addresses. Use of this email list remains the most efficient method for plaintiffs' counsel to  
7 communicate.

#### 8 **5. Creating a Master List of All Plaintiffs' Cases**

9 Proposed Interim Class Counsel also prepared a master list of all known related cases,  
10 which includes the names of the parties, their counsel, and the transferor courts. This was  
11 attached as an Exhibit to their Proposed Agenda for the October 13, 2011 Status Conference  
12 for the convenience of the Court (Dkt. No. 20).

#### 13 **6. Creating An Investigation Database**

14 Proposed Interim Class Counsel have compiled substantial information regarding  
15 potential class members claims based on communications with tens of thousands of consumers  
16 via telephone, email and website submissions.

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25  
26 <sup>7</sup> Five of those firms – Ridout & Lyon, LLP; Casey, Gerry, Schenk, Francavilla, Blatt & Penfield,  
27 LLP; Herman Gerel, LLP; Zimmerman Reed PLLP; Motley Rice LLC – filed a separate Notice  
28 advising the Court of their support for Proposed Interim Class Counsel's Proposed Status  
Conference Agenda (Dkt. No. 24). The second-most supported Proposed Status Conference  
Agenda, filed by Robbins Geller Rudman & Dowd LLP and Barnow and Associates, PC was  
supported by 36 firms (Dkt. No. 15).

1 **IV. CONCLUSION**

2 For all of the foregoing reasons, Movants respectfully request that the Court designate  
3 Brian R. Strange, Jeff S. Westerman, Adam J. Levitt, and Ira P. Rothken as plaintiffs' Interim  
4 Class Counsel and appoint Timothy G. Blood as Plaintiffs' Liaison Counsel.

5 DATED: November 1, 2011

Respectfully submitted,

6  
7 By: /s/ Timothy G. Blood

8 Timothy G. Blood  
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on November 1, 2011, I electronically filed the foregoing with the  
3 Clerk of the Court using the CM/ECF system which will send notification of such filing to the  
4 e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have  
5 mailed the foregoing document or paper via the United States Postal Service to the non-  
6 CM/ECF participants indicated on the Electronic Mail Notice List.

7 I certify under penalty of perjury under the laws of the United States of America that  
8 the foregoing is true and correct. Executed November 1, 2011.

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